MELON LOEAK, Defendant-Appellant

v.

ANJUA LOEAK, Plaintiff-Appellee

Civil Appeal No. 381

Appellate Division of the High Court

Marshall Islands District

September 5, 1984

Appeal of final judgment of trial court, which held that plaintiff, not defendant, was eligible for a seat in the Legislature, as the *Iroij Lablab*. The Appellate Division of the High Court, Munson, Chief Justice, held that finding of trial court, that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, was supported by some evidence, and that trial court which took case on remand properly construed mandate of first opinion of the Appellate Division, and therefore trial court judgment was affirmed.

Marshalls Custom—"Iroij Lablab"—Succession

Trial court properly made finding that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, and that for purpose of succession to the title of *Iroij Lablab*, there is no customary equivalent to a natural born blood heir.

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and LAURETA[1], *Associate Justice*

MUNSON, *Chief Justice*

This case involves a controversy between plaintiff-appellee, Anjua Loeak, and defendant-appellant, Melon Loeak, as to which man is eligible for a particular seat in the Republic of the Marshall Islands Legislature reserved for an *Iroij Lablab*, or paramount chief in the traditional Marshallese system.

Trial was held in the Trial Division in 1978, the Honorable Robert A. Hefner, Associate Justice, presiding. The court found for plaintiff based upon the finding that Melon Loeak's father, Lajore Loeak, was the adopted, not the natural, son of the original Loeak from whom both the parties descend. Defendant appealed.

The Appellate Division set aside the Trial Court's Judgment in its Opinion dated December 3, 1980, and remanded the matter to the Trial Division to determine certain facts and make applicable conclusions of law.

On October 21 and 22, 1981, the hearing on remand was held, the Honorable Harold W. Burnett, Chief Justice, presided. On December 2, 1982, the Judge issued a "Final Judgment," which again held that plaintiff Anjua Loeak was the *Iroij Lablab*.

Melon Loeak now appeals the Final Judgment of 1982, asking for a reversal and entry of final judgment in his favor or, in the alternative, a remand to carry out the first Appellate Opinion's instructions.

This court finds no reversible error by the trial court, and holds that the second trial was conducted in accordance with the instructions of the first Appellate Opinion. For

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[1] U.S. District Court Judge, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

the reasons set forth below, the Final Judgment of the trial court is AFFIRMED.

Appellant argues that the stipulated fact that Lajore was born in the household of Loeak, by one of Loeak's wives, and accepted by Loeak as his son, when coupled with the "born in the household" custom which the trial court found to prevail, compels the legal conclusion that Lajore was at least presumptively Loeak's son. There being no substantial evidence to refute this strong presumption, the decision should be reversed and a final judgment entered in appellant's favor. Alternatively, appellant maintains, the decision should be set aside and remanded for a full hearing on whether Lajore was the son of Loeak or not, with directions to the trial court to apply either the presumption of legitimacy or the "born in the household" rule, or both.

The remand court found "nothing on retrial to disturb the findings of the first trial court that Lajore was not a blood son of Loeak." The court further found that though "an *Iroij* may indeed acknowledge, as his own, a child born in his household and . . . the child would be considered his son," (thus legitimatizing him) nevertheless, "such an acknowledged son is not the same as a blood son in the succession to his father's *Iroij* title." These findings were based on the remand court's receipt of evidence, albeit slight, pertaining to Lajore's birth, and testimony regarding Marshallese custom, and thus they cannot be said to be wholly unsupported by the evidence.

With respect to findings of the original trial court regarding Lajore's blood relationship to Loeak, the first appellate panel found no fault with any factual conclusions or weight and rulings on evidence. It was at the first hearing that most of the facts of Lajore's birth were established. At the second trial on remand, the remaining facts of Lajore's birth were fixed by stipulation and determined

from testimony. We can see no cause to overturn these findings.

Further, it is clear to us that the remand court did not refuse to entertain the presumption of legitimacy, as appellant maintains, but rather, that it wanted to first ascertain the customary basis for the rule before considering its application. Once the evidence was in, the court found no Marshallese custom existed to allow a non-blood son to inherit his father's *Iroij Lablab* title. Consequently, the court saw no need to consider application of the common law presumption of legitimacy. There was no abuse of discretion in such a determination. Indeed, it would have been senseless to have considered the presumption under these circumstances.

Unless there is shown an abuse of discretion, or other reversible error, the remand court's factual finding that the *Iroij* title can be inherited only by natural born blood heirs cannot be overturned now on this appeal.

The remand judgment essentially holds that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, and that for purposes of succession to the title of *Iroij Lablab*, there is no customary equivalent to a natural born blood heir. These findings were supported by some evidence and they will not be overturned here. Moreover, we find that the remand court properly construed and applied the first appellate division's mandate, and therefore, its Judgment is AFFIRMED.